

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS TYRONE CARTER,

Plaintiff,

v.

STATE OF MICHIGAN,

Defendant.

Case No. 17-11074
Hon. Terrence G. Berg

**ORDER DENYING MOTION FOR RELIEF FROM
JUDGMENT AND DISMISSING WITHOUT PREJUDICE
(Dkt. 8)**

On March 28, 2018, this Court entered an Order denying Thomas Tyrone Carter’s civil rights action requesting relief from judgment, but did not indicate whether such dismissal was with or without prejudice. Order, Dkt. 13. When a district court’s order dismissing a claim or motion is “silent as to its prejudicial effect,” that order is considered issued *with* prejudice. Fed. R. Civ. P. 41(b); *Nafziger v. McDermott Int’l, Inc.*, 467 F.3d 514, 518 (6th Cir. 2006). But claims dismissed on the basis of *Heck v. Humphrey*, 512 U.S. 477 (1994)—as this one properly is—should be dismissed *without* prejudice. *See Callihan v. Schneider*, 178 F.3d 800, 804 (6th Cir. 1999); *see also Amaker v. Weiner*, 179 F.3d 48, 52 (2d Cir. 1999) (“Disposition of the case on *Heck* grounds, however, warrants only

dismissal *without* prejudice, because the suit may be reinstituted should plaintiff's conviction be “expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.”) (quoting *Heck*, 512 U.S. at 487) (and collecting cases).

On December 10, 2018, the United States Court of Appeals for the Sixth Circuit entered an Order vacating this Court's Order, and remanding with instructions to dismiss Carter's complaint without prejudice. *Carter v. Michigan*, No. 18-1348 (6th Cir. Dec. 10, 2018). The Court incorporates all factual and legal analysis from its March 28, 2018 Order, as well as that of the Sixth Circuit Court of Appeals' December 10, 2018 Order for the purposes of this instant Order.

For the reasons explained in this Court's March 28, 2018 Order, the Sixth Circuit Court of Appeals' December 10, 2018 Order, and above, this Court finds that Carter has failed to demonstrate extraordinary circumstances under Rule 60(b) for relief from judgment. Carter's motion for relief from judgment is therefore **DENIED**, and the complaint is **dismissed without prejudice**.

SO ORDERED.

Dated: February 21, 2019 s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on February 21, 2019.

s/A. Chubb
Case Manager